

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KEVIN D. FISHER, a natural person,

Plaintiff,

v.

INDEX NO. 07-civ-9239 (SCR)

CHRISTOPHER RADKO, a natural person,

RAUCH CORPORATION

a North Carolina Corporation,

Defendants.

**CHRISTOPHER RADKO'S MOTION FOR LEAVE TO FILE CROSSCLAIM
AGAINST RAUCH INDUSTRIES, INC.**

Defendant, Christopher Radko, respectfully moves this Court for leave to file an Amended Answer to include a Crossclaim against Rauch Industries, Inc. ("Rauch") and alleges:

1. Plaintiff sued Radko and Rauch for, among other things, copyright infringement.

2. At all material times, Radko was a director, officer and employee of Rauch acting within the course and scope of his employment and in furtherance of Rauch's interests.

3. Pursuant to an Employment and Non-Competition Agreement, Rauch promised to indemnify Radko from any and all claims asserted against him with respect to the services he performed and acts and decision he made while employed by Rauch.

4. Radko has demanded that Rauch indemnify him, but Rauch has and continues to refuse.

5. Under Rule 13(g), a party may assert a crossclaim against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action.

6. The deadline to amend the pleadings in this case is not until August 15, 2008, and therefore this amendment is timely.

7. The general policy behind allowing crossclaims is to avoid multiple suits and to encourage the determination of the entire controversy among the parties before the court with a minimum of procedural steps.

8. Radko's counsel has conferred with counsel for Plaintiff and counsel for Rauch concerning this Motion. Plaintiff takes no position on this Motion, while Rauch opposes it.

10. The proposed Amended Answer, Affirmative Defenses and Crossclaim is attached hereto as the Exhibit.

WHEREFORE, Radko requests that the Court grant his Motion for Leave to File Crossclaim against Rauch and, in the event such motion is granted, Radko further requests that this Court deem service of this Motion to be Service of the Crossclaim on Rauch.

Dated: May 28, 2008

/s/ Judith H. Weil

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and

/s/ Matthew S. Nelles

Matthew S. Nelles
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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, I electronically filed the Notice of Motion to Amend and a copy of the Amended Answer with Crossclaims and the exhibit attached thereto with the Clerk of the Court using ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronically Notices of Electronic Filing.

TO:

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/s/ Damien Weinstein
Damien Weinstein, Paralegal

Sworn to before me, this 28th day
of May 2008

 /s/
Judith H. Weil, Notary Public,
State of New York No. 02WE4742997
Qualified in New York County Commission Expires July 31, 2009